IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 26737 of 2007()

AP.105/1998 of III ADDL. DISTRICT COURT, KOLLAM

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PETITIONER:

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1. Jahangheer, S/o. Abdul Khader, Globe House, Lawyer Compoud, Vadakkumbhagom, Kollam from Prinsily, Asramam,o Kollam District.

2. Mumtaz Jahangheer, D/o. Ibrahim Kunju, Globe House, Lawyer Compound, Vadakkumbhagom, Kollam from Prinsily, Asramam, Kollam District.

BY ADV. SRI.B.MOHANLAL

RESPONDENT:

M/s. Maharashtra Apex Corporation Limited, Manipal, represented by its Power of Attorney Holder Krishnankutty, S/o. Nanoo, residing at Mangalathu House, Thazhathucherry, Koottikkada P.O., Kollam District.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.26737 of 2007

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Dated this the 7th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P4 order. A perusal of the records would reveal that the judgment debtors raised all contentions to protract payment of the amount. When the execution petition was filed they raised a contention that there is a mortgage in favour of the Bank and since the mortgagee has first charge on the property, execution petition is not maintainable.

2. The court below passed a considered order holding that the first charge of the Bank be reserved and sale can be proceeded and the decree holder also consented for the same. Thereafter, an opportunity was given by the decree holder to settle the matter. By a letter, it was informed that the matter can be settled for Rs.6 lakhs as one time settlement and directed to collect 10% of the one time settlement amount from the party as a token. It was also made clear in the order that one time settlement proposal is valid only upto 15.2.2007. Now we are in the month of September, 2007. Neither 10% amount nor any other amount is paid and the court has ultimately posted the matter for sale on 10.9.2007.

3. I do not find any ground to interfere with the order of the court below. But at the same time, if a party wants to wipe off the liability in order to safeguard his property, some indulgence has to be shown and therefore, I direct the court below to defer the sale posted on 10.9.2007 by one month. Writ petitioner can approach the decree holder and settle the matter and if the decree holder also consents before the court below for further time to make the actual payment of the amount, the court below is given discretion to grant such time. If the matter is not settled and if there is no consent given by the decree holder, then the court below is directed to proceed with the sale and it is made clear that since the adjournment is granted at the instance of the judgment debtors, their entitlement to have a fresh proclamation is deemed to have been waived.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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